

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 82

BY EDUCATION COMMITTEE

AN ACT

RELATING TO WORKER'S COMPENSATION; AMENDING SECTION 72-102, IDAHO CODE, TO REVISE A DEFINITION; AND AMENDING SECTION 72-205, IDAHO CODE, TO PROVIDE THAT CERTAIN WORK EXPERIENCE STUDENTS SHALL BE COVERED BY THE IDAHO HIGHER EDUCATION POLICY.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 72-102, Idaho Code, be, and the same is hereby amended to read as follows:

72-102. DEFINITIONS. Words and terms used in the worker's compensation law, unless the context otherwise requires, are defined in the subsections which follow:

(1) "Alien" means a person who is not a citizen, a national or a resident of the United States or Canada. Any person not a citizen or national of the United States who relinquishes or is about to relinquish his residence in the United States shall be regarded as an alien.

(2) "Balance billing" means charging, billing, or otherwise attempting to collect directly from an injured employee payment for medical services in excess of amounts allowable in compensable claims as provided by rules promulgated by the commission pursuant to section 72-508, Idaho Code.

(3) "Beneficiary" means any person who is entitled to income benefits or medical and related benefits under this law.

(4) "Burial expenses" means a sum, not to exceed six thousand dollars (\$6,000) for funeral and burial or cremation, together with the actual expenses of transportation of the employee's body to his place of residence within the United States or Canada.

(5) "Commission" means the industrial commission.

(6) "Community service worker" means:

(a) Any person who has been convicted of a criminal offense, any juvenile who has been found to be within the purview of chapter 5, title 20, Idaho Code, and who has been informally diverted under the provisions of section 20-511, Idaho Code, or any person or youth who has been diverted from the criminal or juvenile justice system and who performs a public service for any department, institution, office, college, university, authority, division, board, bureau, commission, council, or other entity of the state, or any city, county, school district, irrigation district or other taxing district authorized to levy a tax or an assessment or any other political subdivision or any private not-for-profit agency which has elected worker's compensation insurance coverage for such person; or

(b) Parolees under department of correction supervision, probationers under court order or department of correction supervision and offender residents of community work centers under the direction or order of the

board of correction who are performing public service or community service work for any of the entities specified in paragraph (6) (a) of this section other than the department of correction.

(7) "Compensation" used collectively means any or all of the income benefits and the medical and related benefits and medical services.

(8) "Custom farmer" means a person who contracts to supply operated equipment to a proprietor of a farm for the purpose of performing part or all of the activities related to raising or harvesting agricultural or horticultural commodities.

(9) "Death" means death resulting from an injury or occupational disease.

(10) Dependency limitations.

(a) "Adopted" and "adoption" include cases where persons are treated as adopted as well as those of legal adoption unless legal adoption is specifically provided.

(b) "Brother" and "sister" include stepbrothers and stepsisters, half brothers and half sisters, and brothers and sisters by adoption.

(c) "Child" includes adopted children, posthumous children, and acknowledged illegitimate children, but does not include stepchildren unless actually dependent.

(d) "Grandchild" includes children of legally adopted children and children of stepchildren, but does not include stepchildren of children, stepchildren of stepchildren, or stepchildren of adopted children unless actually dependent.

(e) "Parent" includes stepparents and parents by adoption.

(f) "Grandparent" includes parents of parents by adoption, but does not include parents of stepparents, stepparents of parents, or stepparents of stepparents.

(11) "Disability," for purposes of determining total or partial temporary disability income benefits, means a decrease in wage-earning capacity due to injury or occupational disease, as such capacity is affected by the medical factor of physical impairment, and by pertinent nonmedical factors as provided in section 72-430, Idaho Code.

(12) "Employee" is synonymous with "workman" and means any person who has entered into the employment of, or who works under contract of service or apprenticeship with, an employer. It does not include any person engaged in any of the excepted employments enumerated in section 72-212, Idaho Code, unless an election as provided in section 72-213, Idaho Code, has been filed. Any reference to an employee who has been injured shall, where the employee is dead, include a reference to his dependents as herein defined, if the context so requires, or, where the employee is a minor or incompetent, to his committee or guardian or next friend.

(13) (a) "Employer" means any person who has expressly or impliedly hired or contracted the services of another. It includes contractors and subcontractors. It includes the owner or lessee of premises, or other person who is virtually the proprietor or operator of the business there carried on, but who, by reason of there being an independent contractor or for any other reason, is not the direct employer of the workers there employed. If the employer is secured, it means his surety so far as applicable.

1 (b) "Professional employer" means a professional employer as defined
2 in chapter 24, title 44, Idaho Code.

3 (c) "Temporary employer" means the employer of temporary employees as
4 defined in section 44-2403(7), Idaho Code.

5 (d) "Work site employer" means the client of the temporary or profes-
6 sional employer with whom a worker has been placed.

7 (14) "Farm labor contractor" means any person or his agent or subcon-
8 tractor who, for a fee, recruits and employs farm workers and performs any
9 farm labor contracting activity.

10 (15) "Gender and number." The masculine gender includes the feminine
11 and neuter; "husband" or "wife" includes "spouse"; the singular number in-
12 cludes plural and the plural the singular.

13 (16) "Income benefits" means payments provided for or made under the
14 provisions of this law to the injured employee disabled by an injury or occu-
15 pational disease, or his dependents in case of death, excluding medical and
16 related benefits.

17 (17) "Independent contractor" means any person who renders service for
18 a specified recompense for a specified result, under the right to control or
19 actual control of his principal as to the result of his work only and not as to
20 the means by which such result is accomplished. For the purposes of worker's
21 compensation law, a custom farmer is considered to be an independent con-
22 tractor.

23 (18) "Injury" and "accident."

24 (a) "Injury" means a personal injury caused by an accident arising out
25 of and in the course of any employment covered by the worker's compensa-
26 tion law.

27 (b) "Accident" means an unexpected, undesigned, and unlooked for
28 mishap, or untoward event, connected with the industry in which it oc-
29 curs, and which can be reasonably located as to time when and place where
30 it occurred, causing an injury.

31 (c) "Injury" and "personal injury" shall be construed to include only
32 an injury caused by an accident, which results in violence to the phys-
33 ical structure of the body. The terms shall in no case be construed to
34 include an occupational disease and only such nonoccupational diseases
35 as result directly from an injury.

36 (19) "Manifestation" means the time when an employee knows that he has
37 an occupational disease, or whenever a qualified physician shall inform the
38 injured worker that he has an occupational disease.

39 (20) "Medical and related benefits" means payments provided for or made
40 for medical, hospital, burial and other services as provided in this law
41 other than income benefits.

42 (21) "Medical services" means medical, surgical, dental or other atten-
43 dance or treatment, nurse and hospital service, medicines, apparatus, ap-
44 pliances, prostheses, and related services, facilities and supplies.

45 (22) "Occupational diseases."

46 (a) "Occupational disease" means a disease due to the nature of an
47 employment in which the hazards of such disease actually exist, are
48 characteristic of, and peculiar to the trade, occupation, process, or
49 employment, but shall not include psychological injuries, disorders

1 or conditions unless the conditions set forth in section 72-451, Idaho
2 Code, are met.

3 (b) "Contracted" and "incurred," when referring to an occupational
4 disease, shall be deemed the equivalent of the term "arising out of and
5 in the course of" employment.

6 (c) "Disablement," except in the case of silicosis, means the event of
7 an employee's becoming actually and totally incapacitated because of an
8 occupational disease from performing his work in the last occupation in
9 which injuriously exposed to the hazards of such disease, and "disabil-
10 ity" means the state of being so incapacitated.

11 (d) "Disablement," in the case of silicosis, means the event of first
12 becoming actually incapacitated, because of such disease, from per-
13 forming any work in any remunerative employment; and "disability" means
14 the state of being so incapacitated.

15 (e) "Silicosis" means the characteristic fibrotic condition of the
16 lungs caused by the inhalation of silicon dioxide (SiO₂) dust.

17 (23) "Outworker" means a person to whom articles or materials are fur-
18 nished to be treated in any way on premises not under the control or manage-
19 ment of the person who furnished them.

20 (24) "Person" means the state or any political subdivision thereof, or
21 any individual, partnership, firm, association, trust, corporation, in-
22 cluding the state insurance fund, or any representative thereof.

23 (25) "Physician" means medical physicians and surgeons, ophthalmolo-
24 gists, otorhinolaryngologists, dentists, osteopaths, osteopathic physi-
25 cians and surgeons, optometrists, podiatrists, chiropractic physicians,
26 and members of any other healing profession licensed or authorized by the
27 statutes of this state to practice such profession within the scope of their
28 practice as defined by the statutes of this state and as authorized by their
29 licenses.

30 (26) "Provider" means any person, firm, corporation, partnership, as-
31 sociation, agency, institution, or other legal entity providing any kind of
32 medical services related to the treatment of an injured employee which are
33 compensable under Idaho's worker's compensation law.

34 (27) "Secretary" means the secretary of the commission.

35 (28) "Self-insurer" means an employer who has been authorized under the
36 provisions of this law to carry his own liability to his employees covered by
37 this law.

38 (29) "State" includes any state, district, commonwealth, zone or terri-
39 tory of the United States or any province of Canada.

40 (30) "Surety" means any insurer authorized to insure or guarantee pay-
41 ment of worker's compensation liability of employers in any state; it also
42 includes the state insurance fund, a self-insurer and an inter-insurance ex-
43 change.

44 (31) "United States," when used in a geographic sense, means the several
45 states, the District of Columbia, the Commonwealth of Puerto Rico, the Canal
46 Zone and the territories of the United States.

47 (32) "Volunteer emergency responder" means a firefighter or peace offi-
48 cer, or publicly employed certified personnel as that term is defined in sec-
49 tion 56-1012, Idaho Code, who is a bona fide member of a legally organized law

1 enforcement agency, a legally organized fire department or a licensed emer-
2 gency medical service provider organization who contributes services.

3 (33) "Wages" and "wage earning capacity" prior to the injury or disable-
4 ment from occupational disease mean the employee's money payments for ser-
5 vices as calculated under section 72-419, Idaho Code, and shall addition-
6 ally include the reasonable market value of board, rent, housing, lodging,
7 fuel, and other advantages which can be estimated in money which the employee
8 receives from the employer as part of his remuneration, and gratuities re-
9 ceived in the course of employment from others than the employer. "Wages"
10 shall not include sums which the employer has paid to the employee to cover
11 any special expenses entailed on him by the nature of his employment.

12 (34) "Wages" and "wage earning capacity" after the injury or disable-
13 ment from occupational disease shall be presumed to be the actual earnings
14 after the injury or disablement, which presumption may be overcome by show-
15 ing that those earnings do not fairly and reasonably represent wage earning
16 capacity; in such a case wage earning capacity shall be determined in the
17 light of all factors and circumstances which may affect the worker's capac-
18 ity to earn wages.

19 (35) "Work experience student" means any person enrolled in the public
20 school districts or public institutions of higher education of this state
21 and who, as part of his instruction, is enrolled in a class or program for
22 academic credit and for which the student is employed by, or works for, a
23 private or governmental entity. The student need not receive wages from the
24 private or governmental entity in order to be classified as a work experience
25 student.

26 (36) "Worker's compensation law" or "workmen's compensation law" means
27 and includes the worker's compensation law of this state and any like or sim-
28 ilar law of any state, United States, territory, or province of Canada.

29 SECTION 2. That Section 72-205, Idaho Code, be, and the same is hereby
30 amended to read as follows:

31 72-205. PUBLIC EMPLOYMENT GENERALLY -- COVERAGE. The following shall
32 constitute employees in public employment and their employers subject to the
33 provisions of this law:

34 (1) Every person in the service of the state or of any political sub-
35 division thereof, under any contract of hire, express or implied, and every
36 official or officer thereof, whether elected or appointed, while performing
37 his official duties, except officials of athletic contests involving sec-
38 ondary schools, as defined by section 33-119, Idaho Code.

39 (2) Every person in the service of a county, city, or any political sub-
40 division thereof, or of any municipal corporation.

41 (3) Participants in the Idaho youth conservation project under the su-
42 pervision of the Idaho state forester.

43 (4) Every person who is a volunteer emergency responder shall be
44 deemed, for the purposes of this law, to be in the employment of the political
45 subdivision or municipality where the department, agency or organization is
46 organized.

47 (5) Every person who is a regularly enrolled volunteer member or
48 trainee of the department of disaster and civil defense, or of a civil de-

1 fense corps, shall be deemed, for the purposes of this law, to be in the
2 employment of the state.

3 (6) Members of the Idaho national guard while on duty and employees of
4 or persons providing voluntary service to an approved Idaho national guard
5 morale, welfare, and recreational activity. No Idaho compensation benefits
6 shall inure to any such member, employee or volunteer or their beneficiaries
7 for any injury or death compensable under federal law.

8 (7) A community service worker, as that term is defined in section
9 72-102, Idaho Code, is considered to be an employee in public employment for
10 purposes of receiving worker's compensation benefits, which shall be the
11 community service worker's exclusive remedy for all injuries and occupa-
12 tional diseases as provided under chapters 1 through 8, title 72, Idaho Code.

13 (8) Every person who participates in a youth employment program funded
14 in whole or in part by state or federal money and administered by a state or
15 federal agency or a nonprofit corporation or entity.

16 (9) A work experience student, as that term is defined in section
17 72-102, Idaho Code, who does not receive wages while participating in the
18 school's work experience program shall be covered by the school district's
19 policy or by the Idaho higher education policy.